




Office of Thrift Supervision
Department of the Treasury

Richard M. Riccobono
Deputy Director

1700 G Street, N.W., Washington, DC 20552 • (202) 906-6853

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MEMORANDUM FOR THE CHIEF EXECUTIVE OFFICERS

FROM: Richard M. Riccobono 

SUBJECT: Enhanced Scrutiny for Transactions That May Involve
The Proceeds of Foreign Official Corruption

On January 16, 2001, OTS joined the Departments of Treasury and State and the other federal banking agencies in issuing the attached joint guidance on policies and procedures for transactions that may involve the proceeds of foreign corruption. The purpose behind issuing this guidance is to assist financial institutions in ensuring that they do not unwittingly hide the proceeds of foreign official corruption. Former Deputy Secretary of the Treasury Stuart Eizenstat chaired the expert level-working group convened to develop this guidance, which included representatives from all of the federal banking agencies.

The guidelines are designed to detect and deter transactions that involve ill-gotten gains by senior foreign political figures, their families and close associates. The newly created policies and procedures are particularly applicable in private banking and other high dollar-value accounts or transactions. Financial institutions are strongly encouraged to adopt these policies and procedures as part of their customer due diligence and anti-money laundering programs.

This guidance contains suggested procedures for opening and maintaining an account. It also contains a list of questionable or suspicious activities that, when present, often will warrant enhanced scrutiny of transactions that involve senior foreign political figures, their families and close associates. I strongly urge all institutions to thoroughly review the enclosed guidance and incorporate the policies and procedures where appropriate.

If you have any questions about this guidance or other anti-money laundering issues, please contact John Davidson, Esq., Regulatory Analyst at (202) 906-7976.

Attachment

GUIDANCE ON ENHANCED SCRUTINY FOR TRANSACTIONS THAT MAY INVOLVE THE PROCEEDS OF FOREIGN OFFICIAL CORRUPTION

**ISSUED BY
THE DEPARTMENT OF THE TREASURY
THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
THE FEDERAL DEPOSIT INSURANCE CORPORATION
THE OFFICE OF THRIFT SUPERVISION
AND THE DEPARTMENT OF STATE**

January 2001

I. Introduction

Action Item 2.1.1 of the *National Money Laundering Strategy for 2000* calls for “[t]he Departments of the Treasury and Justice, and the federal bank regulators, [to] work closely with the financial services industry to develop guidance for financial institutions to conduct enhanced scrutiny of those customers and their transactions that pose a heightened risk of money laundering and other financial crimes.” The expert-level working group convened to develop this Guidance, which was chaired by the Deputy Secretary of the Treasury and counted among its members representatives of each of the federal financial institutions supervisory agencies, concluded that there are several areas of potentially high-risk activity for which enhanced scrutiny may be appropriate. Initially, the working group has developed guidance for one type of high-risk activity – namely, transactions involving senior foreign political figures, their immediate family or their close associates that may involve the proceeds of foreign official corruption. This “Guidance on Enhanced Scrutiny for Transactions that May Involve the Proceeds of Foreign Official Corruption” is being issued by the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Department of State.

The working group determined to focus initially on transactions by senior foreign political figures and their close associates that may involve the proceeds of foreign official corruption for several reasons. First, while all significant corruption adversely affects individual segments in an economy, high-level corruption can be particularly damaging to a nation’s economy and development. This sort of corruption can undermine local efforts to establish and strengthen market-based economic systems; interfere with the international community’s efforts to support and promote economic development; discourage foreign private investment; and foster a climate conducive to financial crime and other forms of lawlessness. The impact of this form of corruption is felt disproportionately by developing nations. And this form of corruption directly impedes the achievement of a core United States diplomatic and international economic policy objective – namely, the promotion of democratic institutions and economic development around

the world. It is thus squarely in the United States' interest to combat this form of corruption. Depriving corrupt officials access to well-established international financial markets, including the United States financial system, can contribute significantly to achieve this goal.

Second, a financial institution that engages in a financial transaction, knowing that the property involved in the transaction represents the proceeds of foreign official corruption, may be involved in the crime of money laundering under United States law, if the proceeds involved in the transactions were generated by a "specified unlawful activity," and if the other statutory elements are met. *See* 18 U.S.C. 1956 & 1957.

Third, regardless of whether the funds involved in the transaction constitute "proceeds" for the purposes of U.S. criminal money laundering laws, business relationships with persons who have high-ranking public positions in foreign governments, or other closely related persons or entities, can, under certain circumstances, expose financial institutions to significant risk, especially if the person involved comes from a country in which corruption and the illicit use of public office to obtain personal wealth may be widespread. This risk is even more acute if the person involved comes from a country whose counter-money laundering regime does not meet international financial transparency standards. Financial institutions that engage, directly or indirectly, in business relationships with senior political figures or closely related persons from such countries thus may be subjecting themselves to significant legal risks, reputational damage, or both.

To assist financial institutions in ensuring that they do not unwittingly hide or move the proceeds of foreign official corruption, this document provides guidance to financial institutions in applying enhanced scrutiny to transactions by senior foreign political figures and closely related persons and entities. This Guidance is intended to help financial institutions more effectively detect and deter transactions that involve the proceeds of foreign corruption, and thus better protect themselves from being used as a conduit for such transactions. This Guidance contains suggested procedures for account opening and maintenance for persons known to be senior foreign political figures, their immediate family or their close associates. It also contains a list of questionable or suspicious activities that, when present, often will warrant enhanced scrutiny of transactions involving such persons.

Banks should apply this Guidance to their private banking activities and accounts, and also may wish to apply this Guidance in connection with high dollar-value accounts or transactions in other relevant areas of their operations. Similarly, other financial institutions should apply this Guidance, as applicable, in connection with high dollar-value accounts or transactions in relevant parts of their operations. (Where this document refers to "accounts" and "business relationships," it should be read and understood in this fashion.)

This Guidance is intended to build upon financial institutions' existing due diligence and anti-money laundering programs, policies, procedures and controls, and to assist financial institutions in the continuing design and development of comprehensive due diligence programs to identify and manage particular risks that may exist. Sound risk management policies and procedures vary among financial institutions and, therefore, the application of this Guidance also may vary among institutions.

This Guidance is not a rule or regulation and should not be interpreted as such. It is advice that financial institutions are encouraged to employ in conjunction with policies, practices and procedures that are in place to enable financial institutions to comply with applicable laws and regulations and to minimize reputational risks. The Federal financial institutions supervisory agencies will continue to monitor whether financial institutions have appropriate controls to identify and deter money laundering, but will not examine, review or audit financial institutions solely for compliance with this Guidance. If, however, deficiencies emerge at a financial institution that would have been minimized or eliminated if the advice contained in this Guidance had been followed, the relevant financial institution supervisor, depending on the severity of the identified deficiencies, may require that the advice contained in this Guidance be integrated into the risk management policies and procedures of the affected institution.

This Guidance is intended to be consistent with applicable civil and criminal laws as well as the regulations of the particular financial institution's supervisory or regulatory agency and the Department of the Treasury. It does not replace, supersede or supplant any financial institution's legal obligations, nor does compliance with this Guidance create a "safe harbor" against action by the United States, any federal agency, or the federal financial institutions supervisory agencies.

II. Enhanced Scrutiny Guidance

A. *General*

As described further herein, financial institutions are encouraged to develop and maintain "enhanced scrutiny" practices and procedures designed to detect and deter transactions that may involve the proceeds of official corruption by senior foreign political figures, their immediate family, or their close associates. These practices and procedures should be viewed as an application of institutions' due diligence and anti-money laundering policies and procedures and should ensure that institutions report such activity as suspicious in accordance with applicable suspicious activity reporting requirements. In order to ensure that practical steps are taken to provide this enhanced scrutiny, it is prudent practice for a financial institution to review its practices in this area as part of its overall internal and external audit.

The manner in which a financial institution may elect to apply the advice contained in this Guidance will vary depending on the extent of the risk determined to exist by each institution as a general matter, given its normal business operations, and in each case as it is presented. Each financial institution should exercise reasonable judgment in designing and implementing policies and procedures regarding senior foreign political figures, their immediate family and their close associates, and for determining any necessary actions to be undertaken by the institution regarding their transactions.

This Guidance should not be read or understood as discouraging or prohibiting financial institutions from doing business with any legitimate customer, including a senior foreign political figure, or his or her immediate family or close associates. To the contrary, this Guidance is designed solely to assist financial institutions in determining whether a transaction

by a senior foreign political figure, his or her immediate family or his or her close associates merits enhanced scrutiny so that the institution, through the application of such scrutiny, is better able to identify and avoid transactions involving the proceeds of foreign corruption and, as necessary and appropriate, to file suspicious activity reports.

In undertaking the reasonable steps and reasonable efforts suggested in this Guidance concerning (1) whether a person or entity is a Covered Person (*see* Section II.B), (2) the establishment and maintenance of accounts for a Covered Person (*see* Section II.C), and (3) potentially questionable or suspicious activities involving a Covered Person's transactions (*see* Section II.D), a financial institution should not rely solely on information obtained from the Covered Person or his or her associates, but should attempt to obtain additional information from its organization and from independent sources (*see* Section II.E.).

B. *Definition of Covered Person*

For the purposes of this Guidance, a "Covered Person" is a person identified in the course of normal account opening, maintenance or compliance procedures to be a "senior foreign political figure," any member of a senior foreign political figure's "immediate family," and any "close associate" of a senior foreign political figure.

A "senior foreign political figure" is a senior official in the executive, legislative, administrative, military or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned corporation. In addition, a "senior foreign political figure" includes any corporation, business or other entity that has been formed by, or for the benefit of, a senior foreign political figure.

The "immediate family" of a senior foreign political figure typically includes the figure's parents, siblings, spouse, children and in-laws.

A "close associate" of a senior foreign political figure is a person who is widely and publicly known to maintain an unusually close relationship with the senior foreign political figure, and includes a person who is in a position to conduct substantial domestic and international financial transactions on behalf of the senior foreign political figure.

When, during its normal account opening, maintenance or compliance procedures, a financial institution learns of information indicating that a particular individual may be a senior foreign political figure, a member of a senior foreign political figure's immediate family, or a close associate of a senior foreign political figure, it should exercise reasonable diligence in seeking to determine whether the individual is, in fact, a Covered Person. We recognize that, in some instances, it is not possible even through the exercise of reasonable diligence to determine whether a particular individual is a Covered Person.

C. *Account Establishment and Maintenance Procedures For Covered Persons*

In conjunction with financial institutions' policies, practices and procedures that are in place to enable financial institutions to comply with applicable laws and regulations, financial institutions are encouraged to employ the following practices when establishing and maintaining a business relationship with a Covered Person:

Ascertain the Identity of the Account Holder and the Account's Beneficial Owner

If, in the course of normal account opening, maintenance or compliance procedures with regard to private banking or other applicable accounts, a financial institution learns of information indicating that the beneficial owner of the account may be a Covered Person, the institution should undertake reasonable efforts to determine whether, in fact, a Covered Person holds or will hold a beneficial interest in the account. If, after making a reasonable effort to make this determination, substantial doubt persists as to whether a Covered Person holds a beneficial interest in the account, the financial institution may wish not to open the account if the institution is unable to determine the capacity in which, and on whose behalf, the proposed account-holder is acting.

If a financial institution is requested to open an account for a Covered Person who comes from a "secrecy jurisdiction," the financial institution should require the Covered Person to provide the information that the institution typically collects to identify the client and his/her source of funds or wealth at the outset of the relationship and to waive any secrecy protections provided by local law so that the institution is able to obtain the information that the institution typically collects when opening an account for a United States resident. For the purposes of this Guidance, a secrecy jurisdiction is a country or territory that, among other things, does not participate in international counter-money laundering information sharing arrangements or, either by law or practice, permits account holders to forbid financial institutions from cooperating with international efforts to obtain account information as part of an official investigation.

Each financial institution should undertake reasonable efforts to determine whether a legitimate reason exists for any request by a Covered Person to associate any form of secrecy with an account, such as titling the account in the name of another person (which could include a family member), personal investment company, trust, shell corporation or other such entity.

Obtain Adequate Documentation Regarding the Covered Person

Concurrent with establishing a business relationship with a Covered Person, the financial institution should obtain from the Person (or others working on his or her behalf) documentation adequate to identify the Covered Person. Concurrent with establishing a business relationship with a Covered Person, the financial institution should take reasonable steps to assess the Covered Person's business reputation.

Understand the Covered Person's Anticipated Account Activity

Concurrent with establishing an account for a Covered Person, the financial institution should document the purpose for opening the account and the anticipated account activity. The institution should take reasonable steps to determine whether the Covered Person has any legitimate business or investment activity in the United States that would make having an account in the United States a natural occurrence.

Determine the Covered Person's Source of Wealth and Funds

Each financial institution asked to establish an account for a Covered Person should undertake reasonable efforts to determine the source of the Covered Person's wealth, including the economic activities that generated the Covered Person's wealth and the source of the particular funds involved in establishing the relationship. Among other things, the institution should take reasonable steps to determine the official salary and compensation of the Covered Persons as well as the individual's known legitimate sources of wealth apart from his or her official position.

Apply Additional Oversight to the Covered Person's Account

The decision to accept or reject establishing an account for a Covered Person should directly involve a more senior level of management than is typically involved in decisions regarding account opening.

All material decisions taken in the course of establishing an account for a Covered Person should be recorded.

An institution that has determined, in the course of its normal account opening, maintenance or compliance procedures, that it has established a business relationship with a Covered Person should undertake an annual review (or more frequently as events dictate) of each such Covered Person's account to determine whether to continue doing that business, including consideration of pertinent account activity and documentation.

D. *Questionable or Suspicious Activities That Often Will Warrant Enhanced Scrutiny of Transactions Involving Covered Persons*

When conducting transactions for or on behalf of Covered Persons, financial institutions should be alert to features of transactions that are indicative of transactions that may involve the proceeds of foreign official corruption. The following non-exhaustive list of potentially questionable or suspicious activities is designed to illustrate the sort of transactions involving Covered Persons that often will warrant enhanced scrutiny, but does not replace, supersede or supplant financial institutions' legal obligations regarding potentially suspicious transactions generally. The list should be evaluated by each financial institution along with other information the institution may have concerning the Covered Person, the nature of the transaction itself, and other parties involved in the transaction, in evaluating a particular transaction. The occurrence of

one or more of the items on the list in a transaction involving a Covered Person often will warrant some form of enhanced scrutiny of the transaction, but does not necessarily mean, in itself, that a transaction is suspicious.

Institutions should pay particular attention to:

- A request by a Covered Person to establish a relationship with, or route a transaction through, a financial institution that is unaccustomed to doing business with foreign persons and that has not sought out business of that type;
- A request by a Covered Person to associate any form of secrecy with a transaction, such as booking the transaction in the name of another person or a business entity whose beneficial owner is not disclosed or readily apparent;
- The routing of transactions involving a Covered Person into or through a secrecy jurisdiction or through jurisdictions or financial institutions that have inadequate customer identification practices and/or allow third parties to carry out transactions on behalf of others without identifying themselves to the institution;
- The routing of transactions involving a Covered Person through several jurisdictions and/or financial institutions prior to or following entry into an institution in the United States without any apparent purpose other than to disguise the nature, source, ownership or control of the funds;
- The use by a Covered Person of accounts at a nation's central bank or other government-owned bank, or of government accounts, as the source of funds in a transaction;
- The rapid increase or decrease in the funds or asset value in an account of a Covered Person that is not attributable to fluctuations in the market value of investment instruments held in the account;
- Frequent or excessive use of funds transfers or wire transfers either in or out of an account of a Covered Person;
- Wire transfers to or for the benefit of a Covered Person where the beneficial owner or originator information is not provided with the wire transfer, when inclusion of such information would be expected;
- Large currency or bearer instrument transactions either in or out of an account of a Covered Person;
- The deposit or withdrawal from a Covered Person's account of multiple monetary instruments just below the reporting threshold on or around the same day, particularly if the instruments are sequentially numbered;

- High-value deposits or withdrawals, particularly irregular ones, not commensurate with the type of account or what is known and documented regarding the legitimate wealth or business of the Covered Person;
- A pattern that after a deposit or wire transfer is received by a Covered Person's account, the funds are shortly thereafter wired in the same amount to another financial institution, especially if the transfer is to an account at an offshore financial institution or one in a "secrecy jurisdiction;"
- The frequent minimal balance or zeroing out of an account of a Covered Person for purposes other than maximizing the value of the funds held in the account (*e.g.*, by placing the funds in an overnight investment and having the funds then return to the account); and
- An inquiry by or on behalf of a Covered Person regarding exceptions to the reporting requirements of the Bank Secrecy Act (*e.g.*, Currency Transaction Reports and Suspicious Activity Reports) or other rules requiring the reporting of suspicious transactions.

E. *Sources of Information*

In addition to a financial institution's existing information sources, several sources of information exist that may assist financial institutions in determining whether to conduct business with an individual who may be a Covered Person, and in determining whether such a Person may be engaging in transactions that may involve proceeds derived from official corruption. While there is no requirement to do so, a financial institution may wish to consult some or all of the following sources:

- The annual *National Money Laundering Strategy* issued jointly by the Department of the Treasury and the Department of Justice (www.treas.gov/press/releases/reports.htm);
- Advisories and other publications issued by the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury (www.treas.gov/fincen);
- Evaluations of particular nations in the International Narcotics Control Strategy Report, prepared annually by the State Department (http://www.state.gov/www/global/narcotics_law/narcotics.html);
- The World Factbook published annually by the Central Intelligence Agency (www.cia.gov/cia/publications/factbook/index.html);
- The Department of State's annual Country Reports on Human Rights Practices (www.state.gov/www/global/human_rights/drl_reports.html);

- Reports issued by the General Accounting Office on international money laundering issues (www.gao.gov);
- Publications and other materials posted on web-sites of United States Government Departments and Agencies (www.firstgov.gov);
- Reports issued by Congressional Committees of hearings and investigations concerning international money laundering (www.house.gov; www.senate.gov);
- Reports of the Financial Action Task Force (FATF) on Money Laundering concerning countries and territories that are non-cooperative in the international effort to combat money laundering, as well as the FATF's annual reports and FATF's annual "Report on Money Laundering Typologies" (www.oecd.org/fatf);
- Reports on corruption and money laundering issued by International Financial Institutions (*e.g.*, the World Bank (www.worldbank.org), the International Monetary Fund (www.imf.org));
- Reports on crime and corruption prepared by various components of the United Nations and other multinational institutions and organizations, such as the Organization for Economic Development and Cooperation (www.oecd.org), the Organization of American States (www.oas.org), the Council of Europe (www.coe.fr), the G-7 and the G-8;
- Reports prepared by non-government organizations that identify corruption, fraud and abuse, such as the annual Corruption Perceptions Index of Transparency International (www.transparency.de);
- Information published on the World Wide Web by foreign countries; and
- Publicly available sources such as newspapers, magazines and other articles from information service providers available in hard-copy or from on-line services.

In addition to these published sources of information, if a financial institution is unsure whether an individual holds a position within the government of a particular country, it is encouraged to contact the United States Department of State at www.state.gov, which may be able to provide that information.